

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER RAPER  
COMMISSIONER ANDERSON  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: MATT HUNTER  
DEPUTY ATTORNEY GENERAL**

**DATE: JULY 9, 2021**

**SUBJECT: IN THE MATTER OF KAREN ERICKSON'S PETITION THAT THE  
IDAHO PUBLIC UTILITIES COMMISSION REQUIRE PUBLIC  
UTILITIES TO COMPLY WITH THE AMERICANS WITH  
DISABILITIES ACT; CASE NO. IPC-E-21-22.**

On June 14, 2021, Karen Erickson filed<sup>1</sup> a two-page petition with the Commission. The Petition may reasonably be understood to make two requests. First, Ms. Erickson asks that the IPUC require public utilities to comply with the federal Americans with Disabilities Act (“ADA”) and provide disabled persons equal access to utility services. Second, Ms. Erickson asks the IPUC to comply with the accessibility requirements of the ADA. For background, the Petition directs the Commission to review Ms. Erickson’s informal complaints with Consumer Assistance.

1. Ms. Erickson’s informal complaints

In 2021, Ms. Erickson initiated two informal complaints with Consumer Assistance. The first of these informal complaints, initiated on March 31, 2021, claimed the City of Nampa and Idaho Power Company were withholding utility services from Ms. Erickson and failing to provide reasonable accommodations to her. In an April 4, 2021, email to the IPUC, Ms. Erickson asked the IPUC to provide her with reasonable accommodations as required under the ADA, specifically “information in an accessible format, the ability to communicate, the right [to] ask questions and receive a response in a format I can understand.” In multiple detailed emails to the IPUC, Ms. Erickson explained that her disability makes it so that she cannot talk on the phone, receive mail or email, or receive text messages. Based on Ms. Erickson’s descriptions in emails

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<sup>1</sup> Ms. Erickson’s document was handed to Commission Staff during a June 14, 2021, meeting. Ms. Erickson asked that Staff file the document with the Commission as a petition.

and in-person conversations with Consumer Assistance, Ms. Erickson appears to assert she can only communicate in-person or by means of certain adaptive technologies<sup>2</sup>. Despite Staff’s efforts to reach Ms. Erickson regarding her informal complaint via email and mail, Staff was unable to communicate with Ms. Erickson until she appeared at the IPUC office on June 8, 2021. Because of its inability to reach Ms. Erickson, and because of Staff’s belief that the IPUC is not the appropriate entity to enforce the ADA, Staff closed the first informal complaint on April 28, 2021.

At the June 8, 2021, meeting with Staff, Ms. Erickson stated that she had come to the Commission because Idaho Power Company disconnected her power for non-payment. During the conversation, Ms. Erickson received and read a text, and explained that the text said Idaho Power Company had turned her power back on. Ms. Erickson then stated that she wanted Idaho Power Company to refrain from disconnecting her service while her ADA-based tort claim against Idaho Power Company was ongoing. Following this meeting, Staff opened a second informal complaint for Ms. Erickson for the purpose of checking whether Idaho Power Company would accommodate Ms. Erickson’s request. Ms. Erickson has since had several meetings with Staff, all in-person.

### **OVERVIEW OF THE ADA**

The ADA broadly prohibits discrimination against individuals with disabilities. 42 U.S.C. § 12101. Disability is defined under the ADA as a “physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment....” 42 U.S.C. 12102. The ADA can be divided into four titles:

- Title I: employment (42 U.S.C. §§ 12111 to 12117).
- Title II: programs and services offered by public entities (42 U.S.C. §§ 12131 to 12165).
- Title III: public accommodations and services operated by private entities (42 U.S.C. §§ 12181 to 12189)
- Title IV: miscellaneous provisions (42 U.S.C. §§ 12201 to 12213).

Here, the Petition raises issues under Title II—programs and services offered by public entities.

A public entity is any state or local government, or any department, agency, special purpose district, or other instrumentality of a state or local government. 42 U.S.C. § 12131. Under the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *Id.* at § 12132. To avoid

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<sup>2</sup> The adaptive technologies Ms. Erickson asserts would assist her were only meaningfully described at an in-person meeting on June 7, 2021.

discriminating against individuals with disabilities, a public entity “shall furnish *appropriate auxiliary aids and services* where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, *a service, program, or activity of a public entity.*” 28 C.F.R. § 35.160 (emphasis added).

An individual who believes it has been subjected to discrimination because of disability may file a civil action. 42 U.S.C. § 12133 (enforcement against a public entity); 42 U.S.C. § 12188 (enforcement against a private entity). Additionally, the U.S. Attorney General has broad investigative authority under the ADA. 42 U.S.C. §§ 12117 and 12188.

When an individual believes it has been subjected to discrimination because of disability by a *public entity*, federal regulations provide an administrative process. The individual may file a complaint with a designated agency: a federal agency tasked with enforcing the ADA. 28 C.F.R. § 35.190. When a complaint is received, the designated agency has authority to investigate whether the public entity has violated the ADA. *Id.*; *see* §§ 35.170 to 35.178 (describing the administrative procedure to be followed in the event of a complaint). The Civil Rights Division of the U.S. Department of Justice has general jurisdiction over these investigations and provides guidance to the designated agencies. *See* 28 C.F.R. § 35.190.

#### **STAFF RECOMMENDATION**

As earlier noted, Ms. Erickson’s Petition makes two requests: 1) that the IPUC require public utilities to comply with the ADA and provide disabled persons equal access to utility services, and 2) that the IPUC comply with the accessibility requirements of the ADA.

While Ms. Erickson states her first request as a general request, her Petition and communications with Staff have alleged an ADA violation by only one Commission-regulated public utility, and the alleged violation have been against Ms. Erickson alone. Staff believes the IPUC is not the appropriate entity to investigate an alleged ADA violation. An individual who believes it has been subjected to discrimination because of disability may file a civil action. 42 U.S.C. § 12133 (enforcement against a public entity); 42 U.S.C. § 12188 (enforcement against a private entity). Additionally, the U.S. Attorney General has broad investigative authority under the ADA. 42 U.S.C. §§ 12117 and 12188. When an individual believes it has been subjected to discrimination because of disability by a *public entity*, federal regulations provide an administrative process. 28 C.F.R. § 35.190. Therefore, the ADA clearly describes by what means ADA-based claims may be made.

Certainly, the IPUC has broad statutory authority to require a public utility to comply with federal law where it relates to the provision of adequate service and the maintenance of fair, just, and reasonable rates. *See Idaho Code* § 61-501. It would be reasonable for the IPUC to address repeated ADA violations by a public utility. However, the IPUC is ill-suited to investigate an ADA claim from a single utility customer, and the IPUC is not statutorily required to conduct such an investigation.

Regarding the second request, Staff believes the IPUC is ADA compliant. It is unclear to what Ms. Erickson refers in her Petition when she writes that the IPUC “itself has not complied with ADA requirements for accessibility.” Throughout the informal complaint process, Staff took all reasonable steps to contact Ms. Erickson to determine what, if any, reasonable accommodations she required to participate in the IPUC’s informal complaint process. Ms. Erickson only responded to Staff’s inquiries when she appeared at the IPUC office on June 8, 2021. Staff has met with Ms. Erickson every time she visits the IPUC office, updating her on her informal complaint and answering her questions. Staff also inquired at the June 8, 2021, meeting about what auxiliary aids might be helpful to Ms. Erickson, and since that time has diligently worked to find an auxiliary aid that fits her needs. As noted by Ms. Erickson in her Petition, “...I was impressed by the willingness of [IPUC] employees to make a significant effort to accommodate me.” Staff intends to continue to work with Ms. Erickson to determine what reasonable accommodations she requires to participate in and enjoy the services, programs, or activities of the IPUC.

Therefore, Staff recommends the Commission dismiss Ms. Erickson’s Petition. The IPUC is not the appropriate entity under the ADA to investigate an ADA claim. Likewise, Staff does not know to what Ms. Erickson refers when she claims (without explanation) that the IPUC is not compliant with the ADA’s accessibility requirements. Staff believes the IPUC is ADA compliant. The Petition should therefore be dismissed.

### COMMISSION DECISION

Does the Commission wish to dismiss the Petition? If the Commission does not wish to dismiss the Petition, does the Commission wish to issue notice of the Petition and set a procedural schedule?

  
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Matt Hunter  
Deputy Attorney General